

**APPLICATION FOR JUDGESHIP**

4<sup>th</sup> Judicial District 2006

**A. PERSONAL INFORMATION**

1. Full Name: Brenda Constance Desmond
  - a. What do you commonly go by: Brenda C. Desmond
2. Birthdate: May 31, 1950 Are you a U.S. citizen? yes
3. Social Security No.
4. Home Address:
5. Office Address: Missoula County Courthouse, Fourth Judicial District Court, 200 W. Broadway, Missoula, MT 59802  
Phone: (406) 258-4728
6. Length of residence in Montana: 28 years
7. List your place of residence for the past five years:

<u>Dates</u>	<u>City</u>	<u>State</u>
Since 1986 _____	Missoula	MT

**B. EDUCATIONAL BACKGROUND**

8. List the names and location of schools attended, beginning with high school:

<u>Name</u>	<u>Location</u>	<u>Date of Degree</u>	<u>Degree</u>
St. Mary Seminary	Buffalo, NY	1968	HS diploma
Fordham University	New York City	1968-1970	good standing
Katholeike Univ. Leuven	(Belgium)	1972	BA Phil.
SUNY at Buffalo Law School	Buffalo, NY	1976	JD
9. List scholarships, awards, honors and citations you have received (Eagle Scout, Book Awards, Boy's or Girl's State, etc.)

As a co-founder, in 1996, of the Missoula Youth Drug Court and as back-up judge for the drug court, I share in awards the court has received, including the United States Department of Justice's 1998 selection of the Missoula Youth Drug Court as a Mentor Court Site. Since that time, our court has trained participants from over 50 jurisdictions in drug court design and practice. Additionally, the Missoula Youth Drug Court is included as one of seven "Exemplary Juvenile Drug Court Programs" in the United States Department of Justice JAIBG Bulletin of May 2001, NCJ No. 184744. The Missoula Youth Drug Court is also one of five featured in the United States Department of Justice juvenile drug court video, 2002.

Special Recognition:

Plaque "Presented [to Brenda Desmond] in Appreciation for Outstanding Guidance and Support in Connection with the Establishment of the Wayne County, Missouri Juvenile Drug Court, November 17, 2005."

10. Were you a member of the Law Review Board? If so, please state the title and citation of any article which was published and the subject area of the article.

No.

**C. PROFESSIONAL BACKGROUND AND EXPERIENCE**

11. List all courts (including state and federal bar admissions) and administrative bodies having special admission requirements in which you are presently admitted to practice, giving the dates of admission in each case.

<u>Court or Administrative Body</u>	<u>Date of Admission</u>
Montana Supreme Court	11-1980
U.S. District Court W.D.N.Y.	4-1979
U.S. District Court of Montana	11-1980

12. Indicate your present employment (list professional partners or associates, if any).

Standing Master, Fourth Judicial District, Missoula, Montana

Chief Justice, Fort Peck Tribal Court of Appeals, Poplar, MT (part-time)

13. State the name, dates and addresses of all law firms with which you have been associated in practice, and of all governmental agencies or private business organizations in which you have been employed,

periods you have practiced as a sole practitioner, and other prior practice:

<u>Employer's Name</u>	<u>Position</u>	<u>Dates</u>
AK. Legal Services Corp.	Staff Attorney (VISTA)	1977
Crow Tribal Court	Court Advisor	1978-1980
Montana Legal Services	Staff Attorney	1980-1982
Montana Legislative Council	Staff Attorney House Judiciary Committee Stream Access Interim Committee Committee on Indian Affairs	1982-1986
UM School of Law	Indian Law Clinic Supervising Attorney Legislative Bill Drafting Project Courses taught: Legislation, Legal Writing and Practice, Appellate Practice, Public Land and Resource Law	1985-1994
Fourth Judicial District	Standing Master (formerly Special Master and judicial staff attorney)	1994-present

14. If you have not been employed continuously since the completion of your formal education, describe what you were doing.

Following my graduation from law school in June 1976, I took (and passed) the New York Bar exam and then spent the fall seeking employment in Alaska. Following my departure from Alaska in the fall of 1977, I traveled for about six months and then moved to Montana.

15. Describe the nature of your present law practice, listing the major types of law you practice and the percentage each constitutes of your total practice.

I work as a Standing Master for the Fourth Judicial District under the authority of Mont Code Ann §§ 3-5-122 et seq. I conduct preliminary matters in court in adult criminal cases, including setting bond and conditions of release. I also conduct preliminary matters in juvenile delinquency proceedings, including detention and release hearings. In civil matters, on referral from the District Court Judges (primarily Departments 2 and 3), or by stipulation of the parties, I conduct hearings in dissolution of marriage and parenting cases up to and including final hearing as well as child abuse and neglect proceedings, mental health commitment proceedings, guardianship proceedings and discovery disputes. I also act as a settlement master or mediator in approximately 20 cases per year.

16. List other areas of law in which you have practiced, including teaching, lobbying, etc.

I taught at the UM School of Law for nine years. As Supervising Attorney of the UM Indian Law Clinic, I worked with students and the Montana Wyoming Tribal Court Judges Association on the planning and presentation of three legal seminars for tribal court judges each year. I also worked with the Montana Wyoming Tribal Court Judges Association on the establishment, in 1990, of the Montana Wyoming Indian Supreme Court. The Indian Law Clinic provided legal and administrative assistance to the court.

I also taught Indian law for seven years in the legal assistant program of Missoula Vo-Tech, (now UM Montana College of Technology).

17. If you specialize in any field of law, what is your specialty?

My specialties include family law, legislation, Federal Indian law and tribal law. As a longtime District Court employee, I am also a specialist/generalist in a broad range of substantive and procedural issues that most often come before the District Court in criminal and civil matters.

18. Do you regularly appear in court?

Yes, I regularly preside over court proceedings. Please see answer to Question 15.

What percentage of your appearance in the past five years were in:

Federal Court	<u>0</u>	%
State or local courts of record	<u>95</u>	%
Administrative bodies	<u></u>	%
Other - Tribal Court, as judge.	<u>5</u>	%

19. During the past five years, what percentage of your practice has been trial practice?

All of my work is related to cases pending in District Court, some of which go to trial.

20. How frequently have you appeared in court?

I preside in court numerous (15-20) times per month, sometimes for hearings several days in length and weekly for the law and motion calendar.

21. How frequently have you appeared at administrative hearings?

0 times per month on average.

22. What percentage of your practice involving litigation has been:

Civil	55%
-------	-----

Criminal	30%
Other (Juvenile)	15%

23. Have you appeared before the Montana Supreme Court within the past five years? If so, please state the number and types of matters handled. Include the case caption, case citation (if any), and names addresses and phone numbers of all opposing counsel for the five most recent cases.

No.

24. State the number of jury trials you have tried to conclusion in the past ten years.

None - the law does not authorize standing masters to preside over jury trials.

25. State the number of non-jury trials you have tried in the past ten years.

Approximately 20 per year go to full hearing. Many more cases involve preliminary and pre-trial hearings but are later settled.

26. State the names, addresses and telephone numbers of adversary counsel against whom you have litigated your primary cases over the last two years. Please include the caption, dates of trial, and the name and telephone number of the presiding judge. If your practice does not involve litigation, give the same information regarding opposing counsel and the nature of the matter.

This question does not apply to my current position.

27. Summarize your experience in adversary proceedings before administrative boards or commissions during the last five years.

None - this question does not apply to my current position.

28. If you have published any legal books or articles, other than Law Review articles, please list them, giving citations, dates, and the topics involved. If you lectured on legal issues at Continuing Legal Education seminars or otherwise, please state the date, topic and group to which you spoke.

Sample Presentations:

Montana-Wyoming Tribal Court Judges Association, Restorative Justice Program of the Montana Attorney General's Office, Whitefish, Montana, April 15, 2005, "Update on Tribal Jurisdiction."

Community Anti-Drug Coalitions of America, National Leadership Forum, Washington D.C., January 2005, Panelist, "Juvenile Drug Courts and Their Connections with the Community."

Mental Health Training for Missoula County Law Enforcement, Missoula, Montana, March 8,18, 2004, "Mental Health Courts."

National Council of Juvenile and Family Court Judges and Bureau of Justice Assistance, Juvenile Drug Court Planning Initiative, serve on faculty three times a year for juvenile drug court training and technical assistance project, 2001 - current.

Annual volunteer training, Missoula Court Appointed Special Advocate Program, 1997 - 2002, "Legal Issues in Child Abuse and Neglect."

Five State Judicial Conference, Whitefish, Montana, June 1996, "Adjudicatory Jurisdiction in Indian Country."

Annual Public Land Law Conference, Missoula, Montana, April 1992, "Tribal Adjudicatory Jurisdiction."

#### **D. PROFESSIONAL AND PUBLIC SERVICE**

29. List all the bar associations and legal professional societies of which you are a member and give the titles and dates of any office you have held in such groups, and committees to which you belong. These activities are limited to matters related to the legal profession. List the dates of your involvement.

Women's Law Section, State Bar of Montana, 1984-present; Vice President, 1988-1990.

Alternative Dispute Resolution Committee, State Bar of Montana, 1987-1988.

Continuing Legal Education Board, State Bar of Montana, 1991-1993.

Indian Law Section, State Bar of Montana, Council Member, CLE Subcommittee Member, 1993 - present.

30. List organizations and clubs, other than bar associations and professional societies, of which you have been a member during the past five years. Please state the title and date of any office you have held in each such organization. If you held any offices, please describe briefly your activities in the organization.

Western Service Area Authority, Board Member, October 2005 - present; state mental health system instrumentality, see, Mont. Code Ann. § 53-21-1006, [www.wsaamt.org](http://www.wsaamt.org).

Missoula Forum for Children and Youth, Member, Oversight Committee, 2002-2005, Member, Missoula Underage Substance Abuse Prevention Coalition, 1998-2005.

Missoula County DUI Task Force, 2005-present.

Missoula Indian Center, Board Member, March 2004-October 2004.

Tribal Advisory Committee, National Association of Drug Court Professionals, in cooperation with the Tribal Law and Policy Institute, 1999-2002. See, e.g. "Tribal Healing to Wellness Courts - The Key Components," Tribal Law and Policy Institute, (contract with U.S. Department of Justice), NCJ188154.

Sons of Norway, Hilsen 531 Lodge, 1995-present.

Missoula International Friendship Program, academic years 2000-2001, 2004-2005, 2005-2006.

Sierra Club, 2003, 2004.

31. Have you ever run for, or held, public office? If so please give the details.

No.

#### **E. HEALTH RECORD**

32. Do you have any disabilities or impairments that might interfere with your performance of the duties of a judge? If so, please explain.

No.

#### **F. PROFESSIONAL CONDUCT AND ETHICS**

33. Have you ever been disciplined for a breach of ethics or unprofessional conduct (including Rule 11 violations) by any court, administrative agency, bar association, or other professional group? If so, give the particulars.

No.

34. Do you know if any proceeding is pending against you before any court, the Commission on Practice of the State of Montana, Judicial Standards Commission, or by any administrative agency or disciplinary committee? If so, give the particulars.

No.

35. Have you ever been found guilty of contempt of court, or sanctioned by any court for any reason? If so, please explain.

No.

36. Do you disagree with any of the Canons of Judicial Ethics applicable to Montana Judges? If so, please explain.

No.

37. Have you ever been arrested or convicted of a violation of any federal law, state law, county or municipal law, regulation or ordinance? If so, please give details. Do not include traffic violations for which a fine of \$100 or less was imposed unless it also included a jail sentence.

No.

38. Have you or your professional liability insurance carrier ever settled a claim against you for professional malpractice? If so, please give the particulars, including the amounts involved.

No.

39. Have you ever been found guilty in any civil or criminal proceedings with conduct alleged to have involve moral turpitude, dishonesty and/or unethical conduct? If so, please give details.

No.

40. Is there any circumstance or event in your personal or professional life which, if brought to the attention of the Commission, the Governor or the Montana Supreme Court, that would affect adversely your qualifications to serve on the court for which you have applied? If so, please explain.

No.

#### **G. BUSINESS AND FINANCIAL INFORMATION**

41. Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? If so, please give details, including dates.

No.

42. If you are an officer, director, or otherwise engaged in the management of any business, please state the name of such business, its nature, and the nature of your duties. State whether you intend to



resign such position immediately upon your appointment to a judicial office.

I am the sole proprietor of a small ranch located in Stillwater and Sweetgrass counties. I am in the process of entering into a lease of the property. I have never operated the ranch myself; it has always been leased.

43. State whether during the past five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise or organization, If so, please identify the source and the approximate percentage of your total income it constituted over the past five years.

I have received compensation for serving on the faculty of National Council of Juvenile and Family Court Judges and Bureau of Justice Assistance Juvenile Court Planning Initiative.

I have received compensation for reviewing federal grant applications for a private agency, Aspen Systems Corp. of Rockville MD.

I have received compensation for my services as a part-time tribal appellate judge.

Over the last five years, I have received approximately ten per cent of my income from these activities.

44. Do you have any financial interests, investments or retainers which might conflict with the performance of your judicial duties, or which in any manner or for any reason might embarrass you? If so, please explain.

I have an IRA that is primarily composed of mutual funds. I would recuse myself from any matter that involved any of my personal financial interests.

45. Have you filed appropriate tax returns as required by federal, state, local and other government authorities? X Yes \_\_\_\_\_ No

If not, Please explain.

46. Do you have any liens or claims outstanding against you by the internal Revenue Service? \_\_\_\_\_ Yes X No  
If yes, please explain.

47. Have you ever been found by the IRS to have willfully failed to disclose properly your income during the last five (5) years? If so, please give details.

No.

48. Please explain your philosophy of public involvement and practice of giving your time to community service.

I was brought up to believe that each one of us must give back to the community according to our time and talents. I believe lawyers have a special obligation and opportunity to participate in public service. I have tried to live up to this obligation as much as I can while also living up to my responsibility to my family.

In recent years, I have given service to the community primarily through volunteering extensively for school, academic, church and athletic activities. For example, I co-coached a middle school Destination Imagination team for three years. I have organized academic and sports team dinners and other events on numerous occasions. I have spoken on legal topics in school classes. I work with a church youth group.

I anticipate the type of contribution I make will continue to change with changes in my personal circumstances. I will continue to contribute in some way throughout my life.

#### H. WRITING SKILLS

49. In the last five years, explain the extent you have researched legal issues and drafted briefs. Please state if associates or others have generally performed your research and the writing of briefs.

I do a great deal of legal analysis, research and writing. I read and analyze legal briefs and memos filed in cases I am handling. If further research is necessary to a complete understanding of the issue or issues, I do that research myself. While I often request proposed orders and findings from attorneys, I use them as a starting point and do significant writing on my own.

50. If you have engaged in any other types of "legal writing" in the last five years, such as drafting documents, etc., please explain the type and extent of writing you have done.

In my work as Associate Justice for the Confederated Salish and Kootenai Tribal Court of Appeals, I drafted opinions published at: <http://www.umn.edu/lawinsider/library/lawbysub/nativeam.htm#tribal>

51. Please attach a writing sample of no more than ten pages which you have written yourself. A portion of a brief or memorandum is acceptable.

I have attached a decision I wrote in a proceeding for grandparent visitation. I have removed the names of the parties to protect their privacy, especially that of the young child involved.

52. What percentage of your practice for the last five years has involved research and legal writing?

60%

53. Are you competent in the use of Westlaw and/or Lexis?

Yes.

#### I. MISCELLANEOUS

54. Briefly describe your hobbies and other interest and activities.

Many of my activities revolve around my family. My two sons are 14 and 19. The older is a freshman in college and the younger is a freshman in high school. Much of my time outside of work is spent with them and participating in or watching their various school, sports, church and other activities. e.g. track, orchestra, Little League. Additionally, as a family we enjoy camping, hiking, skiing and other sports as well as travel.

I like to run for relaxation - not too fast or too far, but enough to stay healthy. I like to ride my bike, garden and read. I like to play the piano and sing and sometimes sing in a chorus.

I am very energetic, an optimist and enjoy my life a great deal.

55. Describe the jobs you have held during your lifetime:

My first job was after 8<sup>th</sup> grade when three other girls and I ran a summer day camp for which we charged one dollar a day and thought we were well paid. I worked summers all through high school and college, everything from baby-sitting to working in an accounting office, interning in a social work agency and working in a bean-canning factory. Another summer I worked for a weekly newspaper. Following college, I worked as a nanny for a young family in Belgium. During law school, I worked in the law library and in a neighborhood café. One summer I worked in the county attorney's office and one summer I worked for the state department of environmental quality. My legal positions since admission to practice are described above.

I was raised in a family of very hard workers and I have carried on that tradition.

56. Please identify the nature and extent of any pro bono work that you have personally performed during the past five years.

Since I work for the court system, my pro bono work has included several presentations made to the Montana Wyoming Tribal Court Judges Association and one to the Chippewa-Cree Tribal Court. I also drafted proposed amendments to by-laws for the Missoula Indian Center.

57. In the space provided, please explain how and why any event or person has influenced the way you view our system of justice.

So many people and events have contributed to my outlook towards the legal system. My father, a lawyer in private practice, instilled in me a deep respect for the legal system as a forum for justice. My uncle, an appellate judge, told wonderful stories that taught me to remember that alongside interesting or challenging legal disputes are always the people most affected by them, the parties. The trial judge for whom I clerked in law school taught me that the most effective judges take their work, but not themselves, seriously.

The person who most impacted on my outlook was Professor Margery Brown, with whom I worked in the UM Indian Law Clinic. As noted above, much of the work of the Indian Law Clinic in the years I was at the law school involved the tribal justice systems of Montana. A number of forces including developments in federal statutory and decisional law had combined to focus attention on tribal justice systems nationally and locally.

As noted earlier, part of the work of the students and staff of the Indian Law Clinic was to design and present legal seminars for tribal judges in Montana and Wyoming. Collectively the judges represented eight tribal courts and fourteen Indian tribes, each with its own history, tradition and culture. The judges themselves came from a variety of backgrounds. Some, but not many, were lawyers. Others had some previous legal or law enforcement experience. Some maintained traditional practices and beliefs. Some had moved away from strictly traditional approaches in favor of other viewpoints. Their educational levels varied a great deal. As I look back, I realize that even though the seminar program was a collaborative effort of students, staff, tribal judges and visiting speakers, it was Professor Brown who led us in the process of distilling the essence of delivering justice regardless of the setting, so that we could provide effective legal education. Largely by her example, she taught us all, that above all a judge must listen to all viewpoints and act in a manner fair to all parties. She emphasized the necessity of learning and understanding applicable law. She also underscored the importance of explaining decisions to promote understanding and predictability. This has turned out to be a description of what I now believe to be a good judge.

58. In the space provided, explain the qualities which you believe to be most important in a good judge.

The qualities most important in a good judge begin with a sense of fairness, a willingness to consider each case individually and set aside personal prejudices and the strength of character to make difficult or unpopular decisions. Additionally, a good judge must be mature and stable and able to act in a respectful manner to all who come before the court. A good judge must be able to carefully consider

decisions but not belabor questions. A good judge is not troubled by conflict and recognizes the variety of valid points of view on many topics. A good judge is friendly and courteous in all working relationships. Finally, a good judge is active and healthy and has outside interests that provide balance in life.

59. In the space provided, explain how a court should reach the appropriate balance between establishment of a body of precedent and necessary flexibility in the law.

We have all heard discussion of this recently in the context of selection of United States Supreme Court Justices. Generally in the trial court setting, there are not the same expectations of developing or not developing precedent as exists in the United States Supreme Court setting.

Nonetheless, to ensure that litigants and other citizens can maintain a sense of security as well as the ability to plan future actions, it is very important that judges take seriously our system's deference to relevant precedent. This is especially true in a trial court, which is bound to follow precedent established by an appellate court. Judges must make efforts to determine cases based on established precedent and let the legislature fill in gaps, if they exist.

60. In the space provided, state the reasons why you are seeking judicial office. Please indicate whether the judicial salary will be an increase or decrease over in your current gross income.

I seek judicial office because my work experience in the last 11 years has led me to the realization that I have a talent for serving as a judicial officer and judge.

In my work as a tribal appellate judge and as a standing master, I have experienced the challenges and stress of a judicial position. I have learned that I am able to handle courtroom proceedings with ease and in a respectful manner and that I enjoy the give-and take of courtroom legal and evidentiary discussions. I have also learned that I am quite capable of setting aside my own personal feeling or beliefs in the interests of fair and impartial decision-making. Although I have a genuinely congenial manner, I do not seek friends in the courtroom and am willing to make difficult decisions. Finally, I am fully aware of the gravity of a judicial position and am able to accept it.

61. What items or events in your career have distinguish you or of which you are most proud.

I am most proud of my continuing commitment to maintaining the quality of and improving, when appropriate, the justice system, particularly in the area of access to justice. I chose to become a lawyer to contribute to society by working to expand access to justice for those for whom access is not assured. During my career I have

held a number of positions that demonstrate my continued commitment to equal justice for all. My first job after law school was as a VISTA attorney for Alaska Legal Services. My next position, which began my longstanding support of development of tribal justice systems, was as Court Advisor for the Crow Tribal Court. Next, I worked for Montana Legal Services in the office that served both the Crow and Northern Cheyenne Indian Reservations.

Following a four-year position as a legislative staff attorney, I began nine years of work at the University of Montana School of Law, where my primary responsibility was the Indian Law Clinic. The Indian Law Clinic's work (as noted above) focused on tribal justice systems and tribal code revision. My work included working with the Montana-Wyoming Tribal Court Judges Association on the establishment of the Montana-Wyoming Indian Supreme Court. I also designed a program for law students who planned to work in tribal government public service that was funded under the United States Department of Education's Patricia Roberts Harris public service fellowship program. I am proud of the significant contributions already made to tribal governments by recipients of the fellowships.

Currently I am involved in a project designed to better address the needs of persons with a serious mental illness involved in the criminal justice system, through establishment of a mental health court. In all other aspects of my position in District Court I strive to ensure that our system is dispensing equal justice.

62. State any pertinent information reflecting positively or adversely on you which you believe should be disclosed to the Judicial Nomination Commission.

I have nothing to add beyond the contents of this application. I am happy to supplement the application if the commission has questions.

63. Is there any comment you would like to make that might differentiate you from other applicants or that are unique to you that would make you the best judicial candidate?

Among the applicants of whom I am aware, I am the only person with a track record of judicial experience. I have an excellent reputation in District Court, in the tribal courts where I have served as a judge and in the community. It is already clear that I can do the job and do it well.

#### **J. CERTIFICATE OF APPLICANT**

I understand the submission of this application expresses my willingness to accept appointment to the Judiciary of the State of Montana, if tendered by the Governor of the Montana Supreme Court, and further, my willingness to abide by the rules of the Judicial Nomination Commission

with respect to my application and the Canons of Judicial Ethics, if appointed.

---

(Date)

---

(Signature of Applicant)

1 Brenda C. Desmond, Standing Master  
2 Fourth Judicial District Dept. 2  
3 Missoula County Courthouse  
4 200 West Broadway  
5 Missoula, MT 59802  
6 (406) 258-4728

7 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

8 IN RE THE GRANDPARENT-  
9 GRANDCHILD CONTACT OF

10 \_\_\_\_\_  
11 Minor Child,

12 \_\_\_\_\_,  
13 Petitioners,

14 and

15 \_\_\_\_\_,  
16 Respondent.

Dept. No. 2  
Cause No. DR-01-221

RECOMMENDED ORDER ON  
RESPONDENT'S PRELIMINARY  
OBJECTIONS TO GUARDIAN AD  
LITEM OBJECTIONS

17 This is a proceeding for grandparent visitation of minor child (Name  
18 Withheld), (born: withheld), filed by Petitioners against Mother's daughter,  
19 Respondent, Minor child's mother. Pending before the Standing Master are  
20 the preliminary objections of Respondent to the recommendations of the  
21 Guardian ad Litem.  
22

23 Minor child is almost six years old. According to Respondent, from the  
24 time of Minor child's birth until the summer of 2002, Petitioners, Minor child  
25 and Respondent had a close and positive relationship. Since then discord  
26



has arisen, which ultimately led to the filing of this proceeding.

Respondent asserts the following three arguments in support of her preliminary objections. First, Respondent argues that Petitioner (Name Withheld) does not have standing to bring a proceeding under § 40-9-102, MCA. Second, Respondent argues that the Guardian ad Litem recommendations would unconstitutionally invade her right to privacy and her parental protections under the due process clause. Third, Respondent argues that 1997 amendments to the Grandparent Visitation Act, (Ch. 343, secs. 32, 33, L.1997), significantly limit court-ordered access to grandchildren and she is already affording all the contact required by the act.

Respondent contends that Petitioner (Name Withheld) lacks standing in this proceeding because he is neither her birth nor her adoptive father. The uncontested facts in the parties' briefs indicate that Respondent's father died in 1976 when she was four years old. Petitioners met in 1976 and began a relationship in 1977. In 1978 Petitioners bought a home together and Petitioners, Respondent and Respondent's sister lived together in the home from then on. Petitioners contend that (Name Withheld) assumed the role and duties of fatherhood with (Name Withheld)'s two daughters. Petitioners married in June 1999.

1           Petitioners respond that (Name Withheld) has acted in loco parentis with  
2   respect to Respondent and her sister throughout their childhood, beginning  
3   in 1978. Accordingly, Respondents contend that (Name Withheld) should  
4   be considered Minor child's maternal grandfather for purposes of standing  
5   under Title 40, chapter 9.  
6

7           No doubt exists that parents have a constitutionally protected right to  
8   raise their children without significant interference. Stanley v. Illinois, 405  
9   U.S. 645 (1972); Girard v. Litke, 1998 MT 231, 966 P.2d 1155 (1998); In re  
10   A.R.A., Erger v. Askren, 277 Mont. 66, 919 P.2d 388 (1996).  
11

12           The United States Supreme Court addressed the constitutionality of  
13   grandparent and other third party visitation statutes for the first time in Troxel  
14   v. Granville, 530 U.S. 57 (2000). In Troxel, grandparents petitioned a  
15   Washington state court for visitation of the daughters of their deceased son.  
16   Their mother was willing to agree to visitation much more limited than that  
17   requested by the grandparents. The grandparents prevailed in the trial court  
18   but the Washington Supreme Court reversed and struck down the statute as  
19   an unconstitutional intrusion on parental rights. In a split decision, (a  
20   plurality of four justices, two concurring opinions and two dissents), a  
21   plurality of the United States Supreme Court agreed that the Washington  
22   statute unconstitutionally infringed on the mother's parental right to make  
23   decisions concerning the care custody and control of her children. The  
24   decisions concerning the care custody and control of her children. The  
25  
26

1 Supreme Court Justices disagreed on the extent (or how to measure the  
2 extent) to which this parental right can be limited by court-ordered visitation  
3 of children over the objection of their parents. Yet the Supreme Court is in  
4 clear agreement that this is an important constitutional right.

5 The Montana Code Annotated does not define the word "grandparent."  
6 Nor does a review of Montana case law as well as the caselaw of other  
7 states shed any direct light on this question. Petitioners are correct that  
8 Montana law provides in limited circumstances for a person to be  
9 considered in loco parentis. However, a literal reading of the word  
10 grandfather, rather than an expanded reading of the word is consistent with  
11 the significant constitutional protection afforded to the parental right to raise  
12 children recognized by both the Montana Supreme Court and the United  
13 States Supreme Court. Therefore, (Name Withheld) does not have standing  
14 as a party in this proceeding.

15 Turning to Respondent's argues that Petitioner (Name Withheld) does  
16 not have standing to bring a proceeding under § 40-9-102, MCA.

17 Respondent's third argument is based on her theory that the 1997  
18 legislature significantly limited the access to grandchildren that can be  
19 ordered by a court. According to Respondent, when the 1997 legislature  
20 changed the word "visitation" to "contact" each time it appears in the act  
21 formerly known as the Grandparent Visitation Act, it did so to restrict court-

1 ordered grandparent visitation. Respondent asserts that she is already  
2 affording all the contact required by the act. Respondent's argument is not  
3 persuasive.

4 In 1997, the Montana legislature enacted House Bill 231, (ch. 343, L.  
5 1997) which is entitled in part, "AN ACT GENERALLY REVISING  
6 DOMESTIC RELATIONS STATUTES REGARDING THE CUSTODY AND  
7 VISITATION OF CHILDREN INVOLVED IN A MARRIAGE DISSOLUTION;  
8 REVISING APPLICABLE TERMINOLOGY;... REVISING APPROPRIATE  
9 TERMINOLOGY IN GRANDPARENT VISITATION STATUTES. The Act  
10 amended 35 sections and repealed 8 sections of the Montana Code  
11 Annotated. The Act's overall intent was to improve the situation of children  
12 in divorce by encouraging cooperation between their parents resulting in  
13 more consistent contact with the children by both parents. The bill's  
14 sponsor, Representative Beverly Barnhart testified in the House Judiciary  
15 Committee that the bill, which was the product of the Domestic Relations  
16 Subcommittee of the Montana State Bar, was "very important" for "children  
17 of divorce" and changed the word "custody" to "parenting plan," presumably  
18 because this phraseology minimizes the winner-loser aspect of some  
19 divorce litigation. Minutes of House Judiciary Committee, January 29, 1997.  
20 Sarah M. Baxter, Ph.D, a psychologist who worked with the subcommittee,  
21 stated in a March 13, 1997 letter to the Senate Judiciary Committee, that the  
22  
23  
24  
25  
26

1 goal of the changes was to encourage parents to keep their conflict away  
2 from the children and to encourage ongoing contact with both parents. The  
3 late attorney Carol Mitchell testified to the House Judiciary Committee that  
4 HB 231:

5 encourages parents and the courts to use mediation and  
6 cooperation in resolving parenting disputes, in a number of  
7 ways:

8 1. It removes the inflammatory terms "custody" and "visitation"  
9 so that parents are no longer divorcing and needlessly losing  
10 custody of their children.

11 Exhibit 5, HB 231, Minutes of House Judiciary Committee January 29, 1997.

12 Respondent contends that the definition of "contact" is narrower than the  
13 definition of "visitation" so we are to assume that the legislature intended to  
14 restrict grandparent access to grandchildren. This assumption is not  
15 supported. Respondent points to nothing in the legislative history of HB 231  
16 that supports this argument. Nor did a review of the legislative history of HB  
17 231 unearth any reference to grandparents. Further, Montana Constitution,  
18 Art V, § 11, states in relevant part:

19 (3) Each bill, ... shall contain only one subject, clearly expressed  
20 in its title. If any subject is embraced in any act and is not  
21 expressed in the title, only so much of the act not so expressed  
22 is void.

23  
24  
25  
26 Further, a necessary first step in ascertaining the meaning of a statute is an

1 examination of the title of the bill in which the statute was enacted or  
2 amended. In re Senate Bill No. 23., 168 Mont. 102, 540 P.2d 975. The only  
3 reference to Title 40, chapter 9 in HB 231's title is "REVISING  
4 APPROPRIATE TERMINOLOGY IN GRANDPARENT VISITATION  
5 STATUTES." This reference alludes to language changes, it does not  
6 indicate that the bill restricts the scope of grandparent visitation. Thus under  
7 the constitutional requirement that the title to each bill clearly express its  
8 subject, it cannot be concluded that the 1997 legislature limited court-  
9 ordered grandparent visitation.  
10  
11

12 Therefore, based on the foregoing, the preliminary objections of  
13 Respondent to the Guardian ad Litem's objections are denied in part and  
14 granted in part.  
15

16 DATED this 6th day of February, 2002  
17

18  
19 \_\_\_\_\_  
BRENDA C. DESMOND, Standing Master  
20  
21  
22  
23  
24  
25  
26